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THE
SOUTHERN DISTRICT OF NEW YORK

OPINIONS OF THE JUDGES

Circuit Court of the United States,

Southern District of New York

SECOND CIRCUIT

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CIRCUIT COURT
OF THE
UNITED STATES,
For the Southern District of New-York,
IN THE SECOND CIRCUIT.

JOHN INGLIS, DEMANDANT,
VS.
THE TRUSTEES OF THE SAILORS' SNUG HARBOUR IN THE
CITY OF NEW-YORK, TENANTS.

IN the cause above entitled, questions having occurred before the Circuit Court of the United States, for the Southern District of New-York, in the Second Circuit, at the October Term, in the year of our Lord one thousand eight hundred and twenty-seven, upon which the opinions of the Judges were opposed: The points upon which the disagreement happened, are hereby, during the same term, upon the request of the Counsel for the Demandant, stated under the direction of the Judges, and certified under the Seal of the Court, to the Supreme Court, at their next Session, to be held thereafter.

The case was as follows:—

It was a Writ of Right, brought in the Circuit Court aforesaid, for the recovery of certain real

estate, situate in the Ninth Ward, of the City of New-York ; whereof, Robert Richard Randall, late of the City of New-York, now deceased, died seised and possessed.

The Count was upon the seisin of the said Robert Richard Randall, and went for the whole premises.

Paul R. Randall, and Catharine Brewerton, a brother and sister of the said Robert Richard Randall, (on whom the alleged right to the lands descended, in moieties, and through whom the demandant deduces his descent,) both survived him, but had since died.

The Tenants put themselves upon the Grand Assize, and the mise was joined upon the mere right.

third The cause was noticed for trial for the October Term, in the year of our Lord one thousand eight hundred and twenty-seven ; and came on for trial on Friday the twenty-fourth day of November, in the said year, during the said October Term.

The Counsel for the Tenants began with the evidence, and showed that they had been in possession for a number of years, claiming as owners.

The Counsel for the Demandant then called witnesses, who testified to the seisin of Robert Richard Randall ; and that he purchased from one Baron Poelnitz. And also testified to the gene-

alogy of the Demandant, as the next collateral heir of the said Robert Richard Randall, on the part of his mother ; and that the blood of Thomas Randall, the father of the said Robert Richard Randall, was extinct.

One of these witnesses testified, among other matters, that the British troops entered into the City of New-York, on the fifteenth day of September, in the year of our Lord one thousand seven hundred and seventy-six ; took and had full and entire possession thereof ; also, of Long Island and Staten Island ; also, of the Bay and river complete ; that they had a Police-Office and a civil government, to a certain extent, all under the British authority, that is to say, under the authority of the British commander in chief.

That the Courts formerly in existence did not then exist : There was a Mayor of the City—but what jurisdiction he possessed, the witness knew not, nor did he ever see any of the judicial process. The witness knew the Demandant from his infancy, and from within two or three days of his birth ; which was perhaps in the year one thousand seven hundred and seventy five, or one thousand seven hundred and seventy-six, in the City of New-York ; that he could not suppose the Demandant more than a year old when the British troops entered the City of New-York ; but that it was only opinion : that the witness thought that the Demandant was the second child ; that Mrs.

1764
 Inglis, his mother, had children very fast, which he believed was the cause of her death; that Charles Inglis, the father of the Demandant, was a native of Ireland, where he was educated; he first came to the State of Delaware, about the year of our Lord one thousand seven hundred and sixty-four, where he resided for six or seven years; he then removed to New-York, and was then about thirty four or thirty five years old, and continued to reside in the City until he left there for England. That he must have left the City of New-York, on the day of, or a little before, the evacuation thereof by the British troops, on the twenty-fifth day of November, in the year of our Lord one thousand seven hundred and eighty-three; that he so left it in company with the British, or perhaps in a single ship; that he took the Demandant with him; went to England direct; remained there two years; was appointed a Bishop, and returned to Nova-Scotia direct, in the year one thousand seven hundred and eighty-five, or one thousand seven hundred and eighty-six, and resided in Nova-Scotia until his death: That the mother of the Demandant died in the City of New-York, a little while before the evacuation thereof by the British troops. The witness took for granted that all who remained in the City of New-York, after the British entered, were attached to the British: That he did not know the fact, but always took for granted that Charles Inglis, the father of the Demandant, was as much a Roy-

alist, as he the witness was, and that no man could be more so than the witness ; but he had never heard Charles Inglis say so : ' That the Demandant is, as the witness thinks, from fifty one, to fifty-two years of age, and the witness is morally certain thereof ; but that he could positively say he the Demandant was born before the year one thousand seven hundred and seventy-nine ; that the Demandant perhaps took his degree of Master of Arts in England ; that he must have gone to England to be ordained a Clergyman : But that his place of residence from the time he first arrived at Nova-Scotia with his father, until the present time, was in Nova-Scotia ; and that the Demandant must also have gone to England to be consecrated a Bishop, which character he now holds, he being Bishop of Nova-Scotia.

Another witness on the part of the Demandant, testified that he had known him since the year one thousand seven hundred and ninety : That they were very intimate as boys ; that the Demandant left college as witness entered the grammar school :—the witness was forty-nine years of age, and one month, and always considered the Demandant as at least two years older than himself ; and that it was well understood at school, that the Demandant was the senior of the witness ; that he had never heard it from the family of the Demandant ; but that boys generally know each other's ages, and the witness had no doubt on the subject ;

the parents of the Demandant, and of the witness, were very intimate at the time, and that the witness then knew the Demandant as being from New-York, as was also the witness; that he had no other means of knowledge than such intercourse above stated, but that he could not be but a few months in error as to the age of the Demandant.

A witness on the part of the Tenants testified, that she (the witness) was married by Doctor Charles Inglis, the father of the Demandant, on the ninth day of October, in the year of our Lord one thousand seven hundred and eighty-three, just before he went to England; that the Demandant was with his father at the marriage, and could not speak plainly; and he was considered as not then five years old, but between four and five; that Charles Inglis, and Margaret his wife, had four children, *to wit*: Charles, the eldest, who died an infant; Margaret, the second child; Ann, the third; and John, (the Demandant,) the fourth; that there was an interval of about two years between each; and the witness was sure that John was the youngest child.

It appeared from an inscription on a slab in the north side of the chancel of St. Paul's Church, in the City of New-York, that Mrs. Margaret Inglis died on the 21st day of September, A. D. 1783; and that her eldest son Charles, died on the 20th day of January 1782, in the eighth year of his age.

The Demandant claimed his relationship to Robert Richard Randall, through his mother, Margaret Inglis, who was a descendant of John Crooke, the common ancestor of Robert Richard Randall, and the Demandant.

The proceedings of a Convention of the State of New York, on the sixteenth day of July, in the year of our Lord one thousand seven hundred and seventy-six, before the British entered the City, were then read, in the words and figures following, that is to say :—

“ Tuesday afternoon, 16th July, 1776.

The Convention met pursuant to adjournment.

PRESENT—General Woodhull, *President.*

New-York.

Colonel Lott, Colonel Broome, Mr. Dunscomb, Major Abeel, Mr. Banker.

Dutchess.

Mr. G. Livingston, Mr. Landon, Dr. Crane, Mr. Hopkins, Mr. Schenck.

Albany.

Mr. A. Yates, Mr. Adgate, Colonel Rensselaer.

Westchester.

Mr. Mills, Colonel Drake, Major Lockwood.

Cumberland.

Mr. Hopkins, Mr. Sissions.

Suffolk.

General Woodhull, Mr. L. L'Houmedieu, Mr. Smith, Mr. Dearing, Mr. Gelston.

Orange.

Mr. Little.

Charlotte.

Mr. Webster.

Ulster.

Colonel Paulding, Major Tappen, Mr. Cantine, Colonel Dewitt, Mr. Wisner.

Tryon.

Mr. Harper, Mr. Moore, Mr. Paris, Mr. Vader, Mr. Newkirk.

“ WHEREAS, The present dangerous situation of this State, demands the unremitting attention of every member of this Convention,—Resolved unanimously, That the consideration of the necessity and propriety of establishing an Independent Civil

Government, be postponed until the first day of August next, and that in the meantime

“ Resolved unanimously, That all magistrates, and other officers of justice in this State, who are well affected to the liberties of America, be requested until further orders, to exercise their respective offices, Provided, that all processes, and other their proceedings, be under the authority and in the name of the State of New-York.

“ Resolved unanimously, That all persons abiding within the State of New-York, and deriving protection from the Laws of the same, owe allegiance to the said Laws, and are Members of the State: And that all persons passing through, visiting, or making a temporary stay in the said State, being entitled to the protection of the Laws during the time of such passage, visitation, or temporary stay, owe, during the same, allegiance thereto.

“ That all persons members of, or owing allegiance to this State, as before described, who shall levy war against the said State, within the same, or be adherent to the King of Great Britian, or others the enemies of the said State, within the same, giving to him or them aid or comfort, are guilty of Treason against the State, and being thereof convicted, shall suffer the PAINS and PENALTIES of DEATH.”

Several Acts of the Legislature of the State of New-York, were then read in evidence on the part

of the Tenants, that is to say, the Act of the third Session, Chapter XXV, entitled "*An Act for the forfeiture and sale of the estates of persons who have adhered to the enemies of this State, and for declaring the sovereignty of the People of this State, in respect to all property within the same.*—Passed the 22d October 1779."

Also, the Act of the same Session, Chapter XXVIII, entitled, "*An Act to provide for the temporary Government of the Southern parts of this State, whenever the enemy shall abandon or be dispossessed of the same, and until the Legislature can be convened.*—Passed October 23d, 1779."

Also, the Act of the sixth Session, Chapter LIV, entitled, "*A Supplementary Act to the Act, entitled, An Act to provide for the temporary Government of the Southern parts of this State, whenever the enemy shall abandon, or shall be dispossessed of the same, and until the Legislature can be convened.*—Passed 27th March 1783."

It was admitted upon the trial, that the said Robert Richard Randall, died on some day between the 1st of June 1801, and the 10th July in the same year 1801. And it appeared that previously to his death, he made a last will and testament, duly executed and attested, in the words following, that is to say :—

" IN THE NAME OF GOD, AMEN.—I, Robert Richard Randall, of the Seventh Ward, of the City of New York, being weak in body, but of sound and disposing mind and memory, *Do* make and ordain this my last will and testament, as follows :

First, I direct all my just debts to be paid.

Secondly, I give unto the legitimate children of my brother, Paul R. Randall, each an annuity or yearly sum of forty pounds, until they respectively attain the age of fifteen years ; and in addition thereto, I give to each of the sons of my said brother, the sum of one thousand pounds, to be paid to them as they may respectively attain the age of twenty one years ; and also to each daughter which my said brother may have, the like sum of one thousand pounds each, to be paid to them as they may respectively be married.

Thirdly, I give and bequeath unto Betsey Hart, my house keeper, my gold sleeve-buttons, and an annuity or yearly payment of forty pounds, to be paid her in quarterly payments during her natural life.

Fourthly, I give and bequeath unto Adam Shields, my faithful overseer, my gold watch, and the sum of forty pounds, to be paid to him as soon after my decease as conveniently may be.

Fifthly, I also give and bequeath unto Gawn Irwin, who now lives with me, my shoe-buckles

and knee buckles, and also the sum of twenty pounds, to be paid immediately after my decease.

Sixthly, As to and concerning all the rest, residue, and remainder of my estate, both real and personal; I give, devise and bequeath the same unto the Chancellor of the State of New York, the Mayor and Recorder of the City of New-York, the President of the Chamber of Commerce in the City of New-York, the President and Vice President of the Marine Society of the City of New-York, the senior Minister of the Episcopal Church in the said City, and the senior Minister of the Presbyterian Church in the said City, to have and to hold all and singular the said rest, residue, and remainder of my said real and personal estate, unto them the said Chancellor of the State of New-York, Mayor of the City of New-York, the Recorder of the City of New-York, the President of the Chamber of Commerce, President and Vice President of the Marine Society, senior Minister of the Episcopal Church, and senior Minister of the Presbyterian Church in the said City, for the time being, and their respective successors in the said offices forever, to, for, and upon the uses, trusts, intents and purposes, and subject to the directions and appointments hereinafter mentioned and declared concerning the same, that is to say; out of the rents, issues and profits of the said rest, residue, and remainder of my said real and personal estate, to erect and build upon some eligible part of the land

upon which I now reside, an Asylum, or Marine Hospital, to be called "The Sailors' Snug Harbour," for the purpose of maintaining and supporting aged, decrepid, and worn-out Sailors, as soon as they, my said Charity Trustees, or a majority of them, shall judge the proceeds of the said estate will support fifty of the said Sailors, and upwards; and I do hereby direct, that the income of the said real and personal estate, given as aforesaid, to my said Charity Trustees, shall forever hereafter be used and applied for supporting the Asylum, or Marine Hospital hereby directed to be built, and for maintaining Sailors of the above description therein, in such manner as the said Trustees, or a majority of them, may from time, or their successors in office, may from time to time direct. And it is my intention that the institution hereby directed directed and created should be perpetual, and that the above mentioned officers for the time being, and their successors, should forever continue and be the governors thereof, and have the superintendence of the same. And it is my will and desire, that if it cannot legally be done according to my above intention, by them, without an Act of the Legislature, it is my will and desire, that they will as soon as possible apply for an Act of the Legislature to incorporate them for the purposes above specified. And I do further declare it to be my will and intention, that the said rest, residue and remainder of my real and personal estate, should be at all events applied

for the uses and purposes above set forth; and that it is my desire all Courts of Law and Equity will so construe this my said will, as to have the said estate appropriated to the above uses, and that the same should in no case, for want of legal form or otherwise, be so construed as that my relations, or any other persons should heir, possess, or enjoy my property, except in the manner, and for the uses herein above specified.

And, *Lastly*, I do nominate and appoint the Chancellor of the State of New-York, for the time being, at the time of my decease, the Mayor of the City of New-York, for the time being; the Recorder of the City of New-York, for the time being; the President of the Chamber of Commerce, for the time being; the the President and Vice-President of the Marine Society in the City of New-York, for the time being; the senior Minister of the Episcopal Church in the City of New-York, and the senior Minister of the Presbyterian Church in the said City, for the time being; and their successors in office after them, to be the executors of this my last will and testament, hereby revoking all former and other wills, and declaring this to be my last will and testament.

In witness whereof, I have hereunto set my hand, and affixed my seal, the first day of June, in the year of our Lord one thousand eight hundred and one.

ROBERT RICHARD RANDALL, (L. S.)

Signed, sealed, published and declared by the said Testator, as, and for for his last will and testament, in the presence of us, who in his presence, at his request, and in the presence of each other, have subscribed our names as witnesses thereto, there being an erasure from the word "President" to the end of the eleventh line of the second page.

URIAH BURGE,
HENRY BREVOORT,
JONAS HUMBERT.

The Act of the Legislature of the State of New-York, of the twenty ninth Session, Chapter IV, entitled, "*An Act to Incorporate the Trustees of the Marine Hospital, called the Sailors' Snug Harbour, in the City of New York.*"—Passed February 6th 1806," was likewise read in evidence as follows, that is to say :—

" *Whereas*, It is represented to the Legislature, that Robert Richard Randall, late of the City of New-York, deceased, in, and by his last will and testament, duly made and executed, bearing date the first day of June, in the year of our Lord one thousand eight hundred and one, did, after bequeathing certain specific legacies therein mentioned, among other things, give, devise, and bequeath all the residue of his estate, both real and personal, unto the Chancellor of this State, the Mayor and Recorder of the City of New-York, the President of the Chamber of Commerce in

the City of New-York, the President and Vice-President of the Marine Society of the City of New-York, the senior Minister of the Episcopal Church in the said City, and the senior Minister of the Presbyterian Church in the said City, for the time being, and to their successors in office respectively, in trust, to receive the rents, issues and profits thereof, and to apply the same to the erecting or building on some eligible part of the land whereon the Testator then resided, an Asylum, or Marine Hospital, to be called "The Sailors' Snug Harbour," for the purpose of maintaining and supporting aged, decrepid and worn-out Sailors, as soon as the said Trustees, or a majority of them, should judge the proceeds of the said estate would support fifty of such Sailors and upwards; and that the said Testator in his said will, declared his intention to be, that the said estate should at all events be applied to the purposes aforesaid, and no other; and if his said intent could not be carried into effect without an act of incorporation, he therein expressed his desire that the said Trustees would apply to the Legislature for such incorporation; and *Whereas*, the said Trustees have represented that the said estate is of considerable value, and if prudently managed, will in time enable them to erect such Hospital, and carry into effect the intent of the Testator; but that as such Trustees, and being also appointed executors of the said will, in virtue of their offices, and only during their continuance in

the said offices, they have found that considerable inconveniences have arisen in the management of the said estate, from the changes which have taken place in the ordinary course of the elections and appointments to those offices, and have prayed to be incorporated for the purposes expressed in the said will, and such prayer appears to be reasonable: Therefore,

I. Be it enacted by the People of the State of New-York, represented in Senate and Assembly, That John Lansing, jun. the Chancellor of this State, De Witt Clinton the Mayor, and Maturin Livingston the Recorder of the City of New-York; John Murray the President of the Chamber of Commerce of the City of New-York; James Farquhar the President; and Thomas Farmer the first Vice-President of the Marine Society of the City of New-York; Benjamin Moore senior Minister of the Episcopal Church in the said City; and John Rogers senior Minister of the Presbyterian Church in the said City; and their successors in office respectively, in virtue of their said offices, shall be, and hereby are, constituted and declared to be a body corporate, in fact, and in name, by the name and style of the Trustees of the Sailors' Snug Harbour, in the City of New-York, and by that name they and their successors shall have continual succession, and shall be capable in Law of suing and being sued, pleading and being impleaded, answering and being answered unto, de-

fending and being defended, in all courts and places whatsoever, and in all manner of actions, suits, complaints, matters and causes whatsoever ; and that they and their successors may have a common seal, and may change and alter the same at their pleasure ; and also, that they and their successors, by the name and style aforesaid, shall be capable in Law of holding and disposing of the said real and personal estate, devised and bequeathed as aforesaid, according to the intention of the said will ; and the same is hereby declared to be vested in them, and their successors in office, for the purposes therein expressed, and shall also be capable of purchasing, holding and conveying any other real and personal estate, for the use and benefit of the said Corporation, in such manner as to them, or a majority of them, shall appear to be most conducive to the interest of the said institution.

II. *And be it further enacted,* That the said Trustees shall have power, from time to time, to make all proper and necessary rules and regulations for the government of the said Corporation, not inconsistent with the Constitution and Laws of the United States, and of this State ; and to elect one of their number to be their President, and to appoint a Clerk and Treasurer, and such other officers as they may think proper, for the management of the business, and concerns of the said Corporation, and to take and demand, if they shall

deem it expedient, from every such Treasurer and other officers, such security for the faithful execution of their duty, and the performance of the trust reposed in them respectively, as to the said Trustees shall seem proper; and every bond or other security so taken by them, shall be valid in Law, and entitle the said Trustees to sue and recover therein, according to the legal operation or effect thereof; and the said officers shall respectively hold their offices, during the pleasure of the said Trustees; and that any five or more of the said Trustees shall constitute a quorum, to transact any of the business and concerns of the Corporation.

III. *And be it further enacted,* That this Act shall be deemed and taken to be a public Act, and be construed in all courts and places benignly and favorably, for the purposes therein intended."

It was admitted, that at the time of the death of the said Robert Richard Randall,

Robert R. Livingston was Chancellor of the State of New-York.

Edward Livingston was Mayor of the City of New York.

John B. Prevost was Recorder of the City of New-York.

John Murray was President of the Chamber of Commerce.

James Farquhar was President of the Marine Society in the City of New-York.

Paschal N. Smith was Vice-President of the Marine Society in the City of New-York.

John Rogers was the senior Minister of the Presbyterian Church in the City of New-York.

And Benjamin Moore was senior Minister of the Episcopal Church in the City of New-York; and that such officers were all known and recognized by the Constitution or the Laws of the State of New-York at the time.

And it was likewise admitted that they, or some of them, entered upon the premises under the will, immediately upon the death of the Testator, claiming to be owners in fee, and held them until the time of the Act of Incorporation:—From which time, until the present day, the Tenants have had the possession, claiming to be owners in fee.

It appeared further by the evidence, that the several offices filled respectively, by the several officers above-named, underwent the following changes, from the time of the death of the Testator, to the time of the trial, that is to say :

1st—Robert R. Livingston continued Chancellor to 28th October 1801.

John Lansing appointed in the place of Robert R. Livingston 28th October 1801.

James Kent appointed in the place of John Lansing 25th February 1814.

Nathan Sanford appointed in the place of James Kent in August 1823.

Samuel Jones appointed in the place of Na-

than Sanford during January 1826, and continued Chancellor until the time of trial.

2dly—Edward Livingston continued Mayor of the City of New York until 1st November 1803.

De Witt Clinton appointed in the place of Edward Livingston 1st November 1803.

Marinus Willet appointed in the place of De Witt Clinton 16th March 1807.

De Witt Clinton appointed in the place of Marinus Willet 22d February 1808.

Jacob Radcliff appointed in the place of De Witt Clinton 5th March 1810.

De Witt Clinton appointed in the place of Jacob Radcliff 18th February 1811.

John Ferguson appointed in the place of De Witt Clinton 20th March 1815.

Jacob Radcliff appointed in the place of John Ferguson 25th July 1815.

Cadwallader D. Colden appointed in the place of Jacob Radcliff 9th March 1818.

Stephen Allen appointed in the place of Cadwallader D. Colden 19th March 1821.

William Paulding appointed in the place of Stephen Allen 26th January 1824.

Philip Hone appointed in the place of William Paulding 16th January 1826.

William Paulding appointed in the place of Philip Hone 2d January 1827, and continued such until and at the time of trial.

3dly—John B. Prevost continued Recorder of the City of New York until 19th November 1804.

Maturin Livingston was appointed in the place of John B. Prevost 19th November 1804.

Pierre C. Van Wyck was appointed in the place of Maturin Livingston 5th May 1806.

Maturin Livingston was appointed in the place of Pierre C. Van Wyck 4th March 1807.

Pierre C. Van Wyck was appointed in the place of Maturin Livingston 22d February 1808.

Josiah Ogden Hoffman was appointed in the place of Pierre C. Van Wyck 5th March 1810.

Pierre C. Van Wyck was appointed in the place of Josiah Ogden Hoffman 4th March 1811.

Josiah Ogden Hoffman was appointed in the place of Pierre C. Van Wyck 12th April 1813.

Richard Riker was appointed in the place of Josiah Ogden Hoffman 15th September 1815.

Peter A. Jay was appointed in the place of Richard Riker 19th April 1819.

Richard Riker was appointed in the place of Peter A. Jay 19th March 1821, and continued such until and at the time of trial.

4thly—John Murray continued President of the Chamber of Commerce, in the City of New-York, until May 1806.

Cornelius Ray was appointed in the place of John Murray, May 1806.

William Bayard was appointed in the place of Cornelius Ray, May 1819 or 1820.

Robert Lenox was appointed in the place of William Bayard 1826, and continued such until and at the time of trial.

5thly—James Farquhar continued President of the Marine Society in the City of New-York, until January 1825.

Captain John Whetten was appointed in the place of James Farquhar in January 1825, and is the present President.

6thly—Doctor Benjamin Moore was chosen Rector of Trinity Church, in the City of New-York, on the 22d December 1800, and continued such until the 27th February 1816.

Doctor John Henry Hobart was chosen Rector of Trinity Church 11th March 1816, and continued such until the time of trial.

The Rector of Trinity Church is usually considered the senior Minister of the Episcopal Church in the City of New-York.

7thly—Doctor John Rogers continued senior Minister of the Presbyterian Church of the City of New-York, from the 4th September 1765, until 9th May 1811.

Doctor McKnight was installed, December 3d, 1789, and continued until 26th April 1809.

Doctor Miller was installed 5th June 1793, and became the senior Minister of the Presbyterian Church from 9th May 1811, until the time of his dismissal, 3d September 1813.

Reverend Philip Melancthon Whelpley was appointed senior Minister of the Presbyterian Church in May 1815, and continued until his death, which took place 17th July 1824.

Reverend W. W. Phillips was appointed Minister on 19th January 1826, and continues until the present time.

It appeared that the two Presbyterian Churches in the City of New-York, separated from each other in the month of May, A. D. 1809.

It also appeared, that there were two Vice-Presidents of the Marine Society, in the City of New-York, above mentioned, that is to say, a *first* Vice-President, and a *second* Vice President, at the time of the death of the said Robert Richard Randall, and before and since, and that the said two officers of *first* and *second* Vice-Presidents were filled as follows, and underwent the following changes, that is to say :—

Paschal N. Smith continued *first* Vice-President to the year 1806.

Thomas Farmer was appointed *first* Vice-President in the place of Paschal N. Smith, and continued in that office to the year 1810.

William Lovett was appointed *first* Vice-President in the place of Thomas Farmer, and continued in office until 1811.

Thomas Farmer was again appointed in the place

of William Lovett, and continued in office until 1819, when

Captain William Whitlock was appointed, and has continued until the present day.

Thomas Farmer was *second* Vice President from the time of the death of the said Robert Richard Randall, until the year 1806, when

William Lovett was appointed *second* Vice President, and continued such until the year 1810, when

William McIntyre was appointed *second* Vice-President and continued such to 1811, at which last mentioned time

William Lovett was appointed *second* Vice-President, and continued to hold that office until 1818, when

William Whitlock was appointed and continued to 1819, at which time

James Lovett was appointed *second* Vice-President, who continues such until and at the time of trial.

The Act of the Legislature of the State of New-York, of the thirty-seventh Session, Chapter LXIX, entitled “ *An Act to amend the Act, entitled, ‘ An Act to Incorporate the Trustees of the Marine Hospital, called the Sailors’ Snug Harbour, in the City of New-York.’—Passed March 25th 1814,*” was read, and is in the words following, that is to say :

"Whereas, The Trustees of the Sailors' Snug Harbour, have represented that doubts exist as to whom, in the contemplation of the Act of Incorporation, are to be considered the senior Ministers of the Episcopal and Presbyterian Churches in the City of New-York: Therefore,

I. Be it enacted by the People of the State of New-York, represented in Senate and Assembly, That the Rector of Trinity Church, in the said City, or in case of his sickness or absence, the Assistant Rector of the said Church, performing the functions of Rector, and the Minister of the Presbyterian Church, in Wall-street, in the said City; and in case there is more than one Minister in the said Church, then the Minister first established in the said Church, shall be the Trustees of the said Corporation.

II. And be it further enacted, That it shall be the duty of the said Corporation, to make an annual report to the Legislature, and to the Common Council of the City, of the state of their funds."

The Counsel for the Tenants then read the Act of the Legislature of the State of New-York, of the ninth Session, Chapter XXIV, entitled, "*An Act for relief against absconding and absent debtors.—Passed 4th April 1786;*" and then offered in evidence a Report made to the Supreme Court of Judicature of the State of New-York,

in the matter of John A. Hardenbrook, against Paul Richard Randall, an absent debtor; which report was filed in the office of the Clerk of the said Supreme Court in the City of New York, on the second day of February, A. D. 1802, and is in the words and figures following, that is to say :

“ State of New-York, ss :

“ *By John B. Prevost, Esquire, Recorder of the City of New-York.*

“ To the Honorable, the Supreme Court of Judicature of the State of New York—*Greeting :*

“ *In the matter of John A. Hardenbrook, against Paul Richard Randall, an absent debtor.*

“ I, John B. Prevost, Recorder of the City of New York, do *report*, that on the thirteenth day of November, in the year of our Lord one thousand eight hundred, at the City of New York, in the State of New-York came before Richard Harison, Esquire, then Recorder of the City of New York, John A. Hardenbrook, of the same City, who being duly sworn, did then and there make his affidavit, in writing, before the said then Recorder, (as appears by the original affidavit, to me delivered and hereto annexed) in the words and figures following, that is to say :—

“ State of New York, ss :—John A. Hardenbrook, of the City of New-York, maketh oath

“and saith, that Paul Richard Randall, late of
 “the City of New-York, is indebted to him the said
 “John A Hardenbrook, in six hundred pounds,
 “(of the value of fifteen hundred dollars) and up-
 “wards, over and above all discounts.—And this
 “deponent further saith, that he, this deponent, is
 “informed by Robert R. Randall, the brother of
 “the said Paul Richard Randall, and by several
 “persons who have lately been in the Republic of
 “France, that the said Paul Richard Randall hath
 “lately married in the said Republic of France, and
 “doth now reside in the City of Paris, in the
 “said Republic.—And this deponent further saith,
 “that he hath made diligent and particular enquiry
 “of and concerning the said Paul Richard Ran-
 “dall, and more particularly relative to his present
 “place of residence, and that he, this deponent,
 “verily believes that the said Paul Richard Ran-
 “dall now resides in Paris, in the said Republic
 “of France.

“JOHN A. HARDENBROOK.

“Sworn the 13th day of November 1800.

“RICH. HARISON, Recorder of New-York.”

“That on the same thirteenth day of November,
 in the year of our Lord one thousand eight hun-
 dred, aforesaid, at the City of New-York, in the
 State of New-York aforesaid, proof by two wit-
 nesses was made to the said then Recorder, of the
 absence of the said Paul Richard Randall, by two

original affidavits in writing, to me delivered and hereto annexed, the one of which said affidavits in writing, is in the words and figures following, that is to say :—

“ State of New-York, ss :—Isaac Whippo, of the
 “ City of New-York, maketh oath and saith, that
 “ he, this deponent, was in the Republic of France
 “ some time in the year one thousand seven hundred
 “ and ninety-nine, and in the year next previous
 “ thereto. And this deponent further saith, that Paul
 “ Richard Randall, late of the City of New-York,
 “ then resided in the City of Paris, in the said Re-
 “ public of France, as this deponent was then and
 “ there informed, and verily believes to be true.
 “ And this deponent verily believes that the said
 “ Paul Richard Randall at present resides in the
 “ said City of Paris, in the said Republic of
 “ France.

“ ISAAC WHIPPO.

“ Sworn the 7th day of November 1800.

“ JOHN KEESE, Commissioner, &c.”

“ And the other of which said affidavits in writ-
 ing, is in the words and figures following, that is
 to say :—

“ State of New-York, ss :—Gideon Gardner of
 Nantucket, mariner, maketh oath and saith, that
 “ he, this deponent, being formerly Master of a
 “ Ship in the European trade, hath lately been at

"Paris, in the Republic of France, and that he, this deponent, several times there saw and conversed with Paul Richard Randall, late of the City of New-York, and that he the said Paul Richard Randall, informed him, this deponent, sometime in or about the month of February last, that he the said Paul was married and lived in Paris aforesaid. And this deponent verily believes that the said Paul Richard Randall now lives and resides in the City of Paris aforesaid.

"GIDEON GARDNER.

"Sworn the 12th day of November 1800.

"*Note*—The words "formerly" February first, interlined.

"Before me, JOHN KEESE, Commissioner."

"And I the said Recorder, do also report, that upon the application of the said John A. Hardenbrook, to the said then Recorder, *to wit*, on the said thirteenth day of November, in the year of our Lord one thousand eight hundred, the said then Recorder, *to wit*, Richard Harison, Esquire, aforesaid, in virtue of the power and authority to him given in and by the said Act, did issue his warrant, under his hand and seal, bearing date the same day and year last aforesaid, (as to me appears by the said warrant to me delivered hereto annexed) in the words and figures following, *to wit* :—

" State of New-York, ss :

[L. S] " *By Richard Harison, Esquire, Recorder
of the City of New-York.*

" To the Sheriff of the City and County of New-
York,—*Greeting :*

" Whereas it appears to me by the oath of John
" A. Hardenbrook, that Paul Richard Randall, late
" of the City of New-York, is indebted to him,
" the said John A. Hardenbrook, in the sum of six
" hundred pounds, (equal in value to fifteen hun-
" dred dollars) and upwards, over and above all
" discounts. And whereas, proof has been made
" to me, pursuant to the direction of the Act here-
" inafter first mentioned, that the said Paul Rich-
" ard Randall at present resides in the City of
" Paris, in the Republic of France.

" These are therefore, pursuant to the directions,
" and by virtue of the authority to me given in and
" by the said Act, entitled "*An Act for relief
" against absconding and absent debtors.*"—Passed
" the fourth day of April in the year of our Lord
" one thousand seven hundred and eighty-six ;
" and an Act, entitled, '*An Act constituting a com-
" missioner in the City of New York, to do cer-
" tain Acts appertaining to the office of Chancellor,
" and a Judge of the Supreme Court, and for
" other purposes therein mentioned.*'—Passed the
" twenty-sixth day of January, one thousand seven
" hundred and ninety-eight—to authorize and com-

"mand you to attach, seize, take, and safely keep
 "all the estate, as well real as personal, of the
 "said Paul Richard Randall, of what kind or
 "nature soever, and every or any part or parcel
 "thereof, in whatever part of your Bailiwick they
 "can be found, with all evidences, books of ac-
 "count, vouchers and papers relating thereto, and
 "forwith to make, (with the assistance of two
 "substantial freeholders,) a just and true inventory
 "of all such estate and effects as you shall so
 "seize and take by virtue hereof, and return the
 "same (signed by yourself and the said two free-
 "holders) to me at my Chambers, situate in Broad-
 "way, in the Fourth Ward of the City of New-
 "York ; And for so doing this and the said acts
 "shall be your sufficient warrant.

" Given under my hand and seal, this thirteenth
 " day of November, in the year of our Lord
 " one thousand eight hundred.

RICHARD HARISON."

"And that immediately after the issuing of the
 warrant aforesaid, the said then Recorder did order
 notice to be given in two of the public Newspapers
 printed in this State, one of which to be printed
 in the City of New York :—" That upon applica-
 "tion and due proof made to him, the said Recorder,
 "pursuant to an Act of the Legislature of the State
 "of New-York, entitled, '*An Act for relief against*
 "*absconding and absent debtors.*'—Passed the 4th

"day of April 1786—he had issued his warrant to
 "the Sheriff of the City and County of New-
 "York, commanding him to attach, seize, take
 "and safely keep all the estate, as well real as per-
 "sonal, of the said Paul Richard Randall, an
 "absent debtor, of what kind or nature soever
 "the same may be, in whatever part of his Baili-
 "wick the same could be found, with all evi-
 "dences, books of account, vouchers and papers
 "relating thereto; and that unless the said Paul
 "Richard Randall should return and discharge his
 "debts within one year after publication of this
 "notice, all the real and personal estate of him the
 "said Paul Richard Randall, would be sold for the
 "payment and satisfaction of his creditors:" which
 said notice bearing date the 13th day of November
 1800, hereto annexed (with the said order of the
 said then Recorder thereon endorsed,) was pub-
 lished in two of the public Newspapers printed
 in this State, *to wit*, in the City of New-York,
 pursuant to the said order, for twelve weeks suc-
 cessively—as to me the said John B. Prevost, Re-
 corder as aforesaid, by the affidavit of David
 Dunnisston, Editor of one of the said public
 Newspapers, called the American Citizen, and
 by the affidavit of John Crookes, printer of the
 other of the said public Newspapers, called the
 Mercantile Advertiser, which said affidavits taken
 and made before me the said Recorder, on the
 thirteenth day of November 1801, with a printed
 copy of the said notice to each of the said affida-
 vits, are hereto annexed.

"And I, the said John B. Prevost, Recorder as aforesaid, do further report, that the said Sheriff of the City and County of New-York, of New-York, (to wit, James Morris, Esquire) to whom the said warrant was directed and delivered, did afterwards (to wit) on the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and one, make return thereof to me the said Recorder, which said return annexed and endorsed on the said warrant, is hereto annexed, and by which it appears that the said Sheriff did well and truly execute the said warrant, and did, with the assistance of two substantial freeholders, namely, John W Gilbert and John H. Sickles, forthwith make a just and true inventory of one house and lot of ground distinguished as number 53, Stone-street, one other house and lot of ground distinguished as number 51, in said Street, and also one other house and lot of ground known and distinguished as number 99, in Liberty-street, all in the City of New-York, being all the estate and effects which he then could seize and take by virtue thereof, and the said Sheriff did return the said warrant, with the said return, to me the said Recorder, signed by himself and the said two freeholders as above mentioned.

"And I, the said John B. Prevost, Recorder as aforesaid, do further report, that the said Paul Richard Randall, the absent debtor aforesaid, not returning and discharging his debts, or otherwise

compounding with, or satisfying his creditors, nor presenting such petition as the said act prescribes ; I, the said Recorder, in virtue of the power to me given in and by the said Acts, did afterwards, (*to wit,*) on the twenty-second day of December, in the year of our Lord one thousand eight hundred and one, by an instrument in writing, under my hand and seal, bearing date the same day and year last above mentioned, nominate and appoint Charles Ludlow, James Brewerton and Roger Strong, all of the said City of New-York, to be the Trustees for all the creditors of the said Paul Richard Randall, an absent debtor, against whose estate, real and personal, said warrant of attachment was issued as aforesaid, pursuant to the said Act. And that afterwards, *to wit,* on the twenty-fourth day of December, in the year last aforesaid, the said Charles Ludlow, James Brewerton and Roger Strong, did severally appear and take an oath before me, the said Recorder, well and truly to execute the trust by the above mentioned appointment reposed in them, according to the best of their skill and understanding.

J. B. PREVOST, Recorder of New-York."

The Counsel for the said Tenants then read the Act of the Legislature of the State of New-York, of the twenty fourth Session, Chapter LXIX, entitled, "*An Act for relief against absent and absconding debtors.*"—Passed March 21, 1801. And

then read in evidence certain affidavits, and an appointment of Trustees, in the words and figures following, that is to say :—

“ In the case of Paul Richard Randall, an absent debtor.

“New-York, ss :—Isaac Riley, of the City of New-York, bookseller, and a bankrupt under the late Law of the United States, for establishing an uniform system of bankruptcy throughout the United States, makes oath, that Paul Richard Randall, at present of the City of Paris, in the Empire of France, merchant, is indebted to the estate of this deponent in the sum of one hundred dollars and upwards, over and above all discounts ; and further saith not.

I. RILEY.

“ Sworn the 12th day of January 1807, before me B. LIVINGSTON.”

“New-York, ss :—Martin Hoffman, William Cutting and Jacob Clinch, all of the City of New-York, being duly sworn, severally say, that they are assignees of the estate and effects of the above named Isaac Riley, a bankrupt under the Law of the United States, above mentioned, and that they verily believe that the above named Paul Richard Randall is indebted to them, as assignees as aforesaid, in the sum of one hundred dollars and upwards, over and above all discounts ; and further say not.

MARTIN HOFFMAN.

WILLIAM CUTTING.

JACOB CLINCH.

Sworn the 23d day of January 1807, by W.
Cutting, before me P. C. VAN WYCK.

(Endorsed)

"In the case of Paul R. Randall, absent debtor—
issued Attachment—Feb. 6, 1807.

P. C. V. W.

*"In the case of Paul Richard Randall, an
absent debtor.*

New-York, ss:—Richard Alsop, of the City of
New-York, gentleman, and John Alsop, of the
same place, bookseller, severally make oath and
say, that they verily believe the above named Paul
Richard Randall hath for a long time past, and yet
doth reside out of the State of New York, *to wit*,
in Paris, in the Empire of France, and further they
say not.

R. ALSOP.

JOHN ALSOP.

Sworn this 6th day of February 1807, before
me JOHN FERGUSON, Justice of Peace, in and
for the City of New-York."

"By the Honorable Pierre C. Van Wyck, Esq.
Recorder of the City of New-York.

To all to whom these presents shall come, or
may in any wise concern. *Be it known* and made
manifest, that I, the said Recorder, have nomina-

ted and appointed, and by these presents, do nominate and appoint, Nathan Sanford, John Juhel and Judah Zuntz, of the City of New York, Esqrs: to be the Trustees, of all the creditors of Paul Richard Randall, an absent debtor, against whose estate, real and personal, a Warrant of Attachment has been issued by me, the said Recorder, pursuant to an Act, entitled, 'An Act for relief against absconding and absent debtors.'

Given under my hand and seal this four-
[L. S.] teenth day of April, in the year one thousand eight hundred and eight.

P. C. VAN WYCK.

"Be it remembered, That on this fourteenth day of April, in the year one thousand eight hundred and eight, the within named Nathan Sanford, John Juhel and Judah Zuntz were by me respectively sworn, *well and truly to execute* the trust in them reposed, as Trustees for all the creditors of the within named Paul Richard Randall, according to the best of their skill and understanding."

P. C. VAN WYCK.

It appeared in evidence, that Catharine Brewerton died some time in or about the year of our Lord one thousand eight hundred and fifteen, and that the said Paul R. Randall died some time in the year of our Lord one thousand eight hundred and twenty; the said Catharine having first, while

a widow, made her last will and testament, dated the fifth day of June, A. D. 1815, duly executed and attested to pass real estate, and devised among other things as follows, that is to say:—

“Secondly, I give, devise and bequeath, all my estate, real and personal, whatsoever and where-soever, in law or equity, in possession, reversion, remainder or expectancy, (excepting such as is herein otherwise specifically mentioned) unto my Executors herein after named, and to the survivor of them, his heirs and assigns forever, upon trust nevertheless for the uses and purposes hereinafter mentioned and intended, that is to say, that my executors shall, &c.”

The Counsel for the Demandant objected, that any testimony showing a right out of the Demandant was inadmissible, under the issue in this cause, which was upon the mere right of the parties to the suit:—

And the Counsel for the Tenants contended, that it was proper evidence in order to break the descent to the Demandant.

The Counsel for the Demandant then offered in evidence, three certain rules of the Supreme Court of Judicature of the People of the State of New-York, which were objected to by the Counsel for the Tenants, as inadmissible, but were received

by the Court ; they are of the date and tenor following, that is to say :—

“ *February 17th, 1804.*

In the matter of Paul Richard Randall, an absent debtor.

On reading and filing the petition of Alexander Stewart, White Matlack and Catharine Brewerton, Agents and Attorneys of the said Paul Richard Randall, and also reading and filing the answer of Charles Ludlow, James Brewerton and Roger Strong, Trustees for all the creditors of the said Paul Richard Randall, to the said petition, and on motion of Mr. Hamilton, Attorney of the said Alexander Stewart, White Matlack and Catharine Brewerton, It is *ordered* by the Court, that the said Trustees pay to the said Paul Richard Randall, or to his said Agents and Attorneys, for his use, the sum of five thousand five hundred dollars out of the monies now remaining in the hands of the said Trustees.”

“ *August 9th, 1804.*

VAN WYCK, Attorney.

In the matter of Paul R. Randall, an absent debtor, and his assignees, &c.

On reading and filing the Petition of Alexander Phoenix, the Attorney and Agent for Paul Richard Randall, together with a certified copy of the Power of Attorney, and the acknowledgments of

the Trustees and former Attorneys of the said Paul, thereunto annexed, and on motion of Mr. Van Wyck, of Counsel for the said Alexander.—

Ordered that the rule heretofore, in February Term, last, made in the said matter be vacated, and that the said sum of five thousand five hundred dollars acknowledged to be still remaining in the hands of the said Charles Ludlow, James Brewerton and Roger Strong, Trustees as aforesaid, be paid over by them to the said Alexander Phœnix, as the Attorney and Agent of the said Paul Richard Randall.”

“ *March 19th, 1825.*

Ordered, that the Clerks of this Court be, and they are hereby authorized to destroy all notices, affidavits, declarations, and all intermediate pleadings in suits between the filing of declaration and the entry of final judgment, and issue Rolls that have been filed previous to the first day of January in the year 1819, in their offices, according to the Statute in such case made and provided, as having become useless.”

It was agreed that the printed volumes of the Statutes of the State of New-York, whether public or private, should at all stages be read in evidence in the same manner as in the Supreme Court, and as if authenticated under the Seal of the State of New-York, &c.

POINTS OF DISAGREEMENT

In the above entitled cause, and upon which the opinions of the Judges were opposed, were as follows, that is to say :—

I. Whether, inasmuch as the Count in the cause is for the entire right in the premises, the Demandant can recover a less quantity than the entirety.

II. Whether John Inglis, the Demandant, was or was not capable of taking lands in the State of New York by descent, which general question presents itself under the following aspects :—

1st—*Whether*, in case he was born before the 4th of July 1776, he is an alien, and disabled from taking real estate by inheritance.

2dly—*Whether*, in case he was born after the 4th of July 1776, and before the fifteenth of September of the same year, when the British took possession of New York, he would be under the like disability.

3dly—*Whether*, if he was born after the British took possession of New York, and before the Evacuation on the 25th of November 1783, he would be under the like disability.

4thly—What would be the effect upon the right of John Inglis to inherit real estate in New-York, if the Grand Assize should find that Charles Inglis, the father, and John Inglis, the Demandant, did, in point of fact, elect to become and continue British subjects and not American Citizens?

III. *Whether* the will of Catharine Brewerton was sufficient to pass her right and interest in the premises in question so as to defeat the Demandant in any respect; the premises being at the time of the will, and ever since held adversely by the Defendants in this suit.

IV. *Whether* the proceedings against Paul R. Randall, as an absent debtor, passed his right or interest in the lands in question to, and vested the same in, the Trustees appointed under the said proceedings, or either of them, so as to defeat the Demandant in any respect.

V. *Whether* the devise in the will of Robert Richard Randall of the lands in question, is a valid devise, so as to divest the heir at law of his legal estate, or to affect the lands in his hands with a trust.



ALL which is hereby certified, &c.

